

STATEMENT
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OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
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Good morning, Chairman Shimkus, Mr. Green, and members of the Subcommittee.

Thank you for inviting me to participate in your hearing today. My name is Dr. Newton Kingman Stablein. After earning a Ph.D. in Geological Sciences from Northwestern University, I worked in academia and private industry for several years before joining the U.S. Nuclear Regulatory Commission (NRC) in 1984. My first position at the NRC was that of Project Manager for the NRC's Yucca Mountain team. I led the team in the completion of reviews of major U.S. Department of Energy (DOE) documents, including the Yucca Mountain draft Environmental Assessment in 1984-1985 and the Yucca Mountain Site Characterization Plan in the 1988-89 timeframe. I have spent most of my 27 years at the NRC involved in NRC's prelicensing and licensing activities related to DOE's efforts to support an application to construct a High-Level Waste (HLW) geological repository at Yucca Mountain. I am currently Chief of a Project Management Branch in the Division of High-Level Waste Repository Safety (HLWRS). This Branch is responsible for leading the review of DOE's license application by the NRC staff and its contractor since 1987, the Center for Nuclear Waste Regulatory Analyses. The Yucca Mountain team that was to conduct the review of the application included many scientists and engineers who had been part of the team for twenty years or more and who were excited at the opportunity, finally, to review a license application for a proposed repository.

The NRC received DOE's license application in June 2008 and, after completing an acceptance review, docketed the application in September 2008. The Nuclear Waste Policy Act

(NWPA) mandated that the NRC was to complete its review of DOE's application within three years, with a year extension possible upon Commission request. The NRC staff prepared to complete its review of DOE's application and production of its Safety Evaluation Report (SER) within approximately eighteen months, by March-April 2010. That would leave about eighteen months for the Atomic Safety and Licensing Board (ASLB) to conduct its hearings on the application. Staff recognized this as an extremely challenging schedule and developed an innovative Project Plan to meet that timetable, determined to fulfill its responsibilities with an on-time production of a high quality SER.

In March 2009, the Executive Director for Operations (EDO) informed the Commission that because of reduced resources in the FY 2009 budget and expected cuts in FY 2010, the NRC staff would complete the SER in FY 2012, two years later than the original schedule. Faced with reduced resources, the staff revamped its plans for the SER, opting to issue it in five separate volumes on a staggered schedule, with the first volume to be published in March 2010 and the other volumes to follow.

In January 2010, the staff informed the Atomic Safety and Licensing Board that the NRC staff would issue Volume 1 (General Information) and Volume 3 (Postclosure) by no later than August and November 2010, respectively. The EDO reaffirmed this information in his March 2010 memorandum to the Commission.

The staff continued development of the five SER volumes and had Volume 1 ready for publication, with a No Legal Objection from Agency attorneys in hand, in June 2010, two months ahead of the August target. Around the same time, Chairman Jaczko issued a memorandum to the EDO stating that it was in the best interests of the Agency "not to alter the schedule for the completion of SER volumes at this time" and directing that Volume 1 be published no earlier than August 2010. He added that subsequent volumes should be issued consistent with and not earlier than the schedule provided to the Commission in March 2010. Volume 1 was published in August 2010.

Volume 3, viewed as the most significant of the SER volumes because of its assessment of DOE's safety case for how the repository would perform over the one million year lifetime of the repository, could have been ready for publication in September 2010, but because the Chairman had directed staff not to issue it before November 2010, the final review steps leading to its publication were slowed.

The staff continued work on the remaining volumes, with the expectation that Volume 3 would be issued in November 2010 and that the remaining three volumes would be published by March 2011. However, on September 30, 2010, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) instructed NRC staff to transition immediately to closure of Yucca Mountain licensing activities and to cease work on the SER volumes. Within the next couple of weeks, the Chairman met with staff and affirmed that it was his decision to discontinue work on the SER and to transition to closure activities, including the issuance of Technical Evaluation Reports (TERs) instead of the SER volumes. It was pointed out to him at this time that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear that, although he could choose that path, he considered that it would be "more political" to publish the SER volumes with regulatory findings than to issue them as TERs devoid of such findings.

This decision had a profound impact on the Yucca Mountain team and its program. As a supervisor in this program, I am keenly aware of the agony experienced by the NRC staff as it dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To be denied the opportunity to finish the SER, the culmination of those years of prelicensing and licensing activity, because of what appeared to be the arbitrary decision of one individual, was wrenching. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a major program that has existed for almost 30 years. It

felt to the staff as if the Chairman had casually dismissed the staff's dedicated efforts and sacrifices of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled.

Although the staff was deeply affected by the Chairman's decision, it acted immediately to follow his direction to develop TERs with no regulatory findings in place of the planned SER volumes. The staff took great pains to preserve as much of the technical content of the former SER volumes as possible while carefully eliminating references to findings with respect to Part 63, the regulation for licensing the Yucca Mountain repository. On March 31, 2011, the staff presented the Postclosure TER, complete and supported by a No Legal Objection from the Agency attorneys, to NMSS management for approval to publish. Over two months later, the NMSS Director informed the Acting Director of HLWRS that she did not approve publication of the document in its present form and that it would need modifications to be published.

These latest developments are the most recent and clearest example of how the staff has been denied the opportunity to fulfill its duty to make its technical insights and information available to the Nation and to thereby enrich the ongoing discussion about what path to follow in dealing with nuclear waste. The work of a generation of scientists and engineers continues to be systematically suppressed, to the detriment of these patriots and the Nation at large.